

Serial No. 10/689,174  
Reply to Office Action dated August 25, 2005

Docket No. BECK-0001-US

### **REMARKS/ARGUMENTS**

Favorable reconsideration and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks. Claims 1-20 are pending in the application. The present Amendment amends independent Claims 1, 6 and 11 and dependent claim 7. The above amendment shows the amended claims in marked up form for the Examiner's convenience.

### **Information Disclosure Statement**

Applicant notes with appreciation the Examiner's consideration of, and making of record, the documents submitted with the Information Disclosure Statement filed on June 7, 2005.

### **INTERVIEW SUMMARY**

Applicant's representative appreciates the courtesy of the Examiner interview held on December 1, 2005. During the interview Applicant's representative proposed claim language for the independent claims. The Examiner and Applicant's representative discussed the new claim language and agreed that it would be readable over the cited prior art. The Examiner then suggested that additional claim language may be necessary to makes the independent claims readable over additional prior art and Applicant's representative suggested further claim language which would be included in an RCE. The Examiner then advised Applicant's representative that patentability would be dependent upon an updated claim search following the filing of an RCE.

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### 35 U.S.C. § 103 Rejections

Claims 1-20 were rejected under 35 U.S.C. § 103 (a) as allegedly being unpatentable over Wood (U.S. Patent No. 6,807,967). Applicant respectfully traverses each of these rejections for at least the following reasons.

With respect to independent Claims 1, 6 and 11, it is stated that the difference between Wood and the claims is that there is an indentation between the first and second nasal inserts. The rejection further states that the Applicant has not disclosed that not having an indentation solves any stated problem or is for any particular purpose and therefore the nasal cannula of the present application is deemed to be a design consideration which fails to patentably distinguish over the prior art of Wood.

The lack of an indentation, however, is not a design consideration and does patentably distinguish the present application over the prior art of Wood. As shown in Fig. 2 and as stated in paragraph [0021], the present invention improves rigidity and stiffness over previous cannulas. The lack of an indentation aids in the structural rigidity of the cannula by removing a weak point in a cannula that may bend or crease. The added rigidity and stiffness of the nasal cannula further aids in laminar gas flow as gas flow to and from a patient may be limited or impinged by bending or creasing. Therefore reconsideration of these claims and withdrawal of the 35 U.S.C. §103 rejection are earnestly sought.

Additionally, independent Claims 1, 6 and 11 have been amended to include the limitation of the at least one bleed port "having an opening flush with the exterior of the nasal cannula." This limitation is shown in the specification in Figs. 5 and 6, as well as in paragraphs [0023] through [0027] of the Specification. The Specification states in paragraph [0023], for example, that the height, shape and location of the bleed ports

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can be designed to reduce the accumulation of carbon dioxide as well as decrease "whistling" or other acoustic effects of exhaust gas leaving the cannula. This feature is not taught by the '967 and therefore allowance of claims 1-20 is earnestly sought.

Claims 1, 6 and 11 have also been amended to include the limitation of the at least one bleed port having "having a height less than ten times the thickness of the delivery tube at the location of the bleed port." This limitation is shown in Figs. 4-6 and paragraphs [0025] to [0027]. The height of the bleed port is established "to reduce the incidence of parasitic acoustic effects," as stated in paragraph [0027]. Further, the height of the bleed port can be further used to tailor the diameter of the bleed ports, as also stated in paragraph [0027].

#### CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, at the telephone number listed below.

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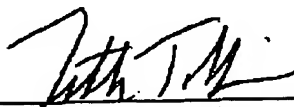
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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3136 and please credit any excess fees to such deposit account.

With best regards,

Very truly yours,

OLDS, MAIER & RICHARDSON, PLLC



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**Date: December 2, 2005**

Attachment(s):